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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,331	04/19/2004	Gilbert M. Makus	TME1316	9569
34356	7590	12/08/2005		
ASHKAN NAJAFI, P.A. 6817 SOUTHPOINT PARKWAY SUITE 2301 JACKSONVILLE, FL 32216			EXAMINER ESTREMSKY, GARY WAYNE	
			ART UNIT	PAPER NUMBER
			3676	

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/826,331

Applicant(s)

MAKUS, GILBERT M.

Examiner

Gary Estremsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/19/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/19/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Since the handle (30) is shown to be pivotally connected to a small, horizontal member (not having a reference numeral) that is in turn connected to the vertical member (21), it is not clear what the proper interpretation and scope of limitation "pivotally connected to one of said plurality of vertical members" should include. It is suggested that the claim be amended as --pivotally mounted with respect to one of the vertical members— to make the plain meaning of the limitation more consistent with what has actually been disclosed.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No 1,663,867 to Swenka in view of U.S. Pat. No. 3,476,427 to Kittelson.

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Swenka '752 teaches Applicant's claim limitations including : a "handle pivotally connected" – 12. Although the handle is shown to be pivotally connected at 13, that connection is not shown to necessarily include a "bolt". It is the examiner's position that it would have been obvious to one of ordinary skill in the art at the time of the invention to form the pivot 13 using a bolt where examiner takes Official Notice that bolts are well known in the art for forming pivotal connections and the choice of a bolt would not otherwise affect function of the disclosed latch but would allow for easy disassembly for repairs etc.. Swenka '867 also teaches : an "elongated locking member" – including 17, a "plurality of brackets" – including 3,6, a "back up plate" – retaining the end of spring 19 opposite to end at 18. though the reference does not explicitly disclose how the 'back up plate' is connected to the bracket, it has the integral structure it would have if it were "welded" whereby it's noted that the limitation does not clearly define any structure that might be relied upon to patentably distinguish the claimed invention from the structure of the prior art. Regardless, it's the examiner's position that attaching the plate to the bracket of Swenka '867 via welding would have been an obvious design choice or engineering expedient for one of ordinary skill in the art in order to simplify manufacturing and/or reduce costs where the examiner takes Official Notice that welding is well known in the art and assembly of the parts into the configuration shown through the use of welding would not otherwise affect function of the latch. Swenka '867 also teaches a "spring means disposed within said locking member" – 19. Although the reference does not illustrate details of the gate "frame", frames having a plurality of spaced vertical members are well known in the art as shown by Kittelson

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'427 (members 22,24) for example. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the latch of Swenka '867 on a gate such as that taught by Kittelson '427 in order to take advantage of the weather guarding of latch parts explicitly disclosed by Swenka '867 on a gate such as that of Kittelson '752 especially where the Swenka '867 reference suggests its use in a general way, on either wood or metal gates.

### ***Allowable Subject Matter***

5. Claims 2-12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. While many of the individual structures of the claimed invention are well known, the selection and combination of the various feature so as to result in the invention, as a whole, would require an impermissible use of hindsight due to lack of suggestion and resulting changes in the function of the individual elements when re-combined otherwise indicating a lack of 'obviousness'.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 2,759,752 to Demings.


U.S. Pat. No. 336,374 to Bayrhofer.

U.S. Pat. No. 440,919 to Hendricks.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 571 272-7055. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gary Estremsky  
Primary Examiner  
Art Unit 3676